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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,967	07/21/2003	Ioana M. Rizoiu	BI9001DIV2CON	6283

7590 07/13/2005

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EXAMINER	
SHAY, DAVID M	
ART UNIT	**PAPER NUMBER**
3739	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/624,967	RIZOIU	
	Examiner	Art Unit	
	david shay	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *September 29, 2003*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *53-94* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *53-94* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "user control accepting a user input which specifies cutting efficiency"; the "outputting atomized fluid particles from a plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers is different from an angle of incidence from a second one of the plurality of atomizers"; "the fiber guide tube is disposed between the first atomizer and the second atomizer"; "the output axes of all point from the respective atomizers to a general vicinity of the interaction zone"; "the output axes intersect a longitudinal axis of the fiber guide within the interaction zone"; "wherein atomized fluid particles from a first one of the plurality of atomizers combine with atomized fluid particles from a second one of the plurality of atomizers"; "the output axes a first one of the plurality of atomizers is not parallel to an output axis of a second one of the plurality of atomizers"; "wherein atomized fluid particles are simultaneously output from the plurality of atomizers into the interaction zone"; "a dial for controlling the repetition rate of the electromagnetic energy"; "a dial for controlling the average power of the electromagnetic energy"; "wherein the plurality of atomizers is two atomizers"; "the output axes intersect a longitudinal axis of the fiber guide near or in the interaction zone"; and "the output axes intersect in a general vicinity of the path near or in the interaction zone" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The amendment filed February 7, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "outputting atomized fluid particles from a plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers is different from an angle of incidence from a second one of the plurality of atomizers"; "the fiber guide tube is disposed between the first atomizer and the second atomizer"; "the output axes of all point from the respective atomizers to a general vicinity of the interaction zone"; "the output axes intersect a longitudinal axis of the fiber guide within the interaction zone"; "wherein atomized fluid particles from a first one of the plurality of atomizers combine with atomized fluid particles from a second one of the plurality of atomizers"; "the output axes a first one of the plurality of atomizers is not parallel to an output axis of a second one of the plurality of atomizers";

"wherein atomized fluid particles are simultaneously output from the plurality of atomizers into the interaction zone"; "a dial for controlling the repetition rate of the electromagnetic energy"; "a dial for controlling the average power of the electromagnetic energy"; "wherein the plurality of atomizers is two atomizers"; "the output axes intersect a longitudinal axis of the fiber guide near or in the interaction zone"; and "the output axes intersect in a general vicinity of the path near or in the interaction zone".

Applicant is required to cancel the new matter in the reply to this Office Action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 68-94 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on "outputting atomized fluid particles from a plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers"; "an angle of incidence from a first one of the plurality of atomizers is different from an angle of incidence from a second one of the plurality of atomizers"; "the fiber guide tube is disposed between the first atomizer and the second atomizer"; "the output axes of all point from the respective atomizers to a general vicinity of the interaction zone"; "the output axes intersect a longitudinal axis of the fiber guide within the interaction zone"; "wherein atomized fluid

particles from a first one of the plurality of atomizers combine with atomized fluid particles from a second one of the plurality of atomizers"; "the output axes a first one of the plurality of atomizers is not parallel to an output axis of a second one of the plurality of atomizers"; "wherein atomized fluid particles are simultaneously output from the plurality of atomizers into the interaction zone"; "a dial for controlling the repetition rate of the electromagnetic energy"; "a dial for controlling the average power of the electromagnetic energy"; "wherein the plurality of atomizers is two atomizers"; "the output axes intersect a longitudinal axis of the fiber guide near or in the interaction zone"; and "the output axes intersect in a general vicinity of the path near or in the interaction zone".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 53-56 and 60-68, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rizoiu et al (SPIE 1994 "Morphological...").

Claims 53-56 and 61-68, are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Rizoiu et al (SPIE 1994 "New Laser....").

Claims 53, 54, 56-58, 61-63, and 65-68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rizoiu et al (DENT 1994).

Claims 53, 54, 56-58, 61-63, and 65-68, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rizoiu et al (SPIE 1993).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 53-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoiu et al (SPIE 1994 "Morphological...") in combination with Rizoiu et al ('256). Rizoiu et al (SPIE 1994 "Morphological...") teaches the application of a water and air spray with infra red laser energy. Rizoiu et al ('256) teach using multiple atomizers which are directed non-parallel to the laser axis and whose axes converge near or at the interaction zone. It would have been obvious to the artisan or ordinary skill to employ the multiple atomizer method of Rizoiu et al ('256) in the method of Rizoiu et al (SPIE 1994 "Morphological...") since Rizoiu et al (SPIE 1994 "Morphological...") provide few details of the atomizer, or to use the laser bean/water spray

interaction of Rizoiu et al (SPIE 1994 "Morphological...") in the method of Rizoiu et al ('256), thus producing a method such as claimed.

Claims 53-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoiu et al (SPIE 1994 "New Laser....") in combination with Rizoiu et al ('256). Rizoiu et al (SPIE 1994 "New Laser....") teaches the application of a water and air spray with infra red laser energy. Rizoiu et al ('256) teach using multiple atomizers which are directed non-parallel to the laser axis and whose axes converge near or at the interaction zone. It would have been obvious to the artisan or ordinary skill to employ the multiple atomizer method of Rizoiu et al ('256) in the method of Rizoiu et al (SPIE 1994 "New Laser....") since Rizoiu et al (SPIE 1994 "New Laser....") provide few details of the atomizer, or to use the laser bean/water spray interaction of Rizoiu et al (SPIE 1994 "New Laser....") in the method of Rizoiu et al ('256), thus producing a method such as claimed.

Claims 53-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoiu et al (DENT 1994) in combination with Rizoiu et al ('256). Rizoiu et al (DENT 1994) teaches the application of a water and air spray with infra red laser energy. Rizoiu et al ('256) teach using multiple atomizers which are directed non-parallel to the laser axis and whose axes converge near or at the interaction zone. It would have been obvious to the artisan or ordinary skill to employ the multiple atomizer method of Rizoiu et al ('256) in the method of Rizoiu et al (DENT 1994) since Rizoiu et al (DENT 1994) provide few details of the atomizer, or to use the laser bean/water spray interaction of Rizoiu et al (DENT 1994) in the method of Rizoiu et al ('256), thus producing a method such as claimed.

Claims 53-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoiu et al (SPIE 1993) in combination with Rizoiu et al ('256). Rizoiu et al (SPIE 1993) teaches the application of a water and air spray with infra red laser energy. Rizoiu et al ('256) teach using multiple atomizers which are directed non-parallel to the laser axis and whose axes converge near or at the interaction zone. It would have been obvious to the artisan or ordinary skill to employ the multiple atomizer method of Rizoiu et al ('256) in the method of Rizoiu et al (SPIE 1993) since Rizoiu et al (SPIE 1993) provide few details of the atomizer, or to use the laser bean/water spray interaction of Rizoiu et al (SPIE 1993) in the method of Rizoiu et al ('256), thus producing a method such as claimed.

Claims 67-69 and 76-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumakhov et al (1990) in combination with Grendahl and Elliott, Jr. or Wilkins (WO '428 or US '267) in combination with Grendahl or Arkad'ev et al in combination with Grendahl as applied to claims 37, 62, 64 and 66 above, and further in combination with Kumakhov (SU '888) teach a device with a variable diameter along the length, and capillaries of variable diameters, which are proportional to the diameter along the length, and capillaries of variable diameters, which are proportional to the diameter of the device. It would have been obvious to the artisan of ordinary skill to provide the variable diameter channel configuration of Kumakhov (SU '888) in the device of Kumakhov et al (1990) in combination with Elliott, Jr. or Wilkins (WO '428 or US '267) since this would enable the more efficient focusing of a divergent beam as taught by Kumakhov et al, thus producing a device such as claimed.

Claims 70-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, Jr. in combination with Kumakhov et al (1990) or Elliott, Jr. with Kumakhov (1990) or Wilkins (WO '428) or US '267) or Arkad'ev et al in combination with Vartanyany et al as applied to claims 58 and 59 above, and further in view of Kumakhov (SU '888). The teachings of Kumakhov (SU '888) and motivations for combination thereof are essentially those already set forth above. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well-known teachings to produce a method such as claimed.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-82 of U.S. Patent No. 6,288,499. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the

instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 and 19-53 of U.S. Patent No. 6,567,582. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-16 of U.S. Patent No. 6,561,803. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims

encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,544,256. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 and 36-40 of U.S. Patent No. 6,350,123. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims

encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-68 of U.S. Patent No. 6,231,567. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 5,968,037. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the

instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 5,785,521. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,741,247. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the

instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30-80, 84, 85, 87-96, 100-104, and 107-111 of U.S. Patent No. 6,821,272. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

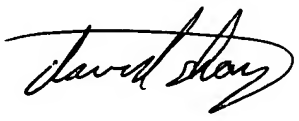
Claims 53-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,669,685. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent application claims. Here, the patent application claims require elements A, B, C, and D while instant application claims only requires elements

A, B, and C. Thus it is apparent that the more specific patent application claims encompass the instant application claims. Following the rationale in In re Goodman cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330